

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 130 of 1995

in

COMPANY PETITION No 157 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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HEIRS OF JOITARAM C PATEL

Versus

O.L. OF ARYODAY GINNING & MFG CO. LTD.

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Appearance:

MR AK CLERK for Petitioners  
OFFICIAL LIQUIDATOR for Respondent No. 1  
SERVED for Respondent No. 2, 3, 4, 5

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 20/02/97

ORAL JUDGEMENT

This application is filed by the heirs and legal representatives of Joitaram C.Patel to claim an amount of Rs.16508.25 with compound interest thereon from the O.L.

2. Joitram C. Patel was a workman in Aryoday Ginnging and Mfg. Co.Ltd., Ahmedabad and he had filed a claim by preferring Application oNo.105/86 before the Controlling Authority under the Payment of Gratuity Act 1972 to get the amount of P.F. and gratuity after he had resigned from the service of the said company . Said application was decided on 10.6.87 and the company the was ordered to pay Rs. 16,508.25 to him.

3. Said Joitram C Patel died thereafter without getting the amount ordered in his favour and therefore his heirs and legal representatives have filed the present claim before this court after the said company has been wound up by the order of this court dated 27.10.89.

4. The O.L. has contended that the claim of the petitioner would not have an over riding preferential claim in view of the provisions of section 529(3)(iv) of the Companies Act.1956. Sub-section 3(iv) to section 529 of the Companies reads as under:

" all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company."

It is the contention of the O.L. that the gratuity account was not maintained by the said company for the welfare of the workmen and he did not find any account to that effect and the claim of the petitioner was not also mentioned and notified by the directors of the company. If the provisions of section 529(3)(iv) are taken into consideration along with the provisions of Gratuity Act, then it would be quite that if under the law, a company is bound to make payment of the gratuity and there is no question of specific or separate account for the purpose of the same being maintained. Even if the separate account ought to have been maintained the company court will have to hold that the company had maintained accounts as per the statutory provisions . When there is no option for the company in maintaining such account and when maintaining of such account is the statutory obligation and duty of the company, merely because the company did not perform or abide by its statutory duty while considering the claim of a workman under section 529(3)(iv), the court will not accept such in action on the part of the company to deny and deprive the legitimate dues of the workman. P.F. Act and Gratuity

Act are social welfare legislations and they are created for the welfare of the workmen and therefore, said provisions will have to be always interpreted in favour of the workmen in order to see that they get real benefit of the said enactments. The order which has been passed by the Competent Authority also clearly mentions that an amount of Rs.16,508.25 p. has been awarded by the authority by saying that it was as per the record of the company which has gone in liquidation. It will have to be presumed that that amount was found due to the workman on account of gratuity on accounts maintained by the company. Therefore, merely because the O.L. did not get necessary information regarding the maintenance of the said account from the company, the workman could not be denied the payment of the same on priority basis and he could not be asked to stand in queue along with the secured creditors. I therefore, order the O.L. to make payment of the amount claimed by the petitioner in this application from the funds available to him from the liquidated company within three weeks from today. The application stands disposed of. No order as to costs.

(S.D.Pandit.J)